IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

Crl.Rev.Pet.No. 378 of 2000()

CRA.164/1996 of ADDL.SESSIONS COURT, THALASSERY
CC.525/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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REVN. PETITIONER: APPELLANT/ACCUSED

K.P.ANILKUMAR, S/O.KRISHNAPANICKER
KAYARALAM AMSOM, MULLAKODI DESOM
TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADV. SRI.T.A.SHAJI

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, (SHO., KANNUR TOWN POLICE STATION)
REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.378/2000

ORDER ON CRL.M.P.NO.2207/2000 IN CRL.R.P.NO.378/2000

DISMISSED

27.3.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

CRL.R.P.No.378 of 2000

Dated this the 27th day of March, 2007

ORDER

The revision petitioner stands convicted for the offence under Sections 279, 337, 338 and 304(A) IPC and under Section 3(1) read with 181 of the M.V. Act and sentenced to R.I. for a period of three months each under Sections 279, 337 and 338 IPC, R.I. for a period of one year under Section 304(A) IPC and to pay a fine of Rs.500/- in default, to undergo simple imprisonment for one month under Section 181 of M.V. Act.

2. The prosecution case is that on 24.9.1992 at about 8.45 p.m. the accused drove KL13/5909 bus in a rash and negligent manner and dashed against a Maruti van having registration No.,KRN 667 driven by the deceased and as a result of which the deceased and three others who were travelling in the van sustained injuries. The deceased died at the hospital. The evidence adduced in the matter consisted the testimony of PWs' 1 to 17, Exts. P1 to P22 and Mos' 1 and 2. The courts below have convicted the accused on the basis of the evidence of

PWs' 1 and 2 who were the travellers in the Maruti van and also on the basis of the evidence that the vehicle driven by the accused was on the wrong side. The bus was proceeding towards the western side and the van from the opposite direction through the National Highway. As per the scene mahazar and as per the version of the witnesses the bus was clearly on the wrong side. The above fact stands undisputed.

3. The contention of the revision petitioner is that the van came from the bylane from the southern side was not considered by both the courts below. The suggestion to the above fact was put to PW2. He has denied the same. The accused has asserted the above fact that the van came from the bylane not noticing the bus that was proceeding towards the western direction and on seeing the van the accused applied sudden break and swerved the vehicle to avoid a collusion but hit on the van. It is pointed out that the scene mahazar contained that in the road there was tyremark extending 12 mtrs. from the left side tyre of the bus and that the tyremark was from the south eastern side towards the north. It is also pointed out that the

other occurrence witnesses who were the passengers of the bus as well as the persons residing near the location who were cited were not examined. The counsel for the revision petitioner has relied on the decision reported in Nageshwar v. State of Maharashtra (AIR 1973 (1) SC 165) that the examination of marks of wheels on the road would be very useful in appreciating the rest of the evidence.

4. I find that both the courts below have not considered the above aspect and has exclusively relied on the testimony of PWs' 1 and 2 who were the travellers of the Maruti van and who are also the employees of the deceased. I find that the version of the accused as to the incident cannot be rejected outright from the fact that the existence of the above tyremark to an extent of 12 mtrs. from the south eastern side towards the north is a strong evidence that support the plea of the accused that on seeing the van coming from the bylane situated on the southern side he applied sudden break and turned the vehicle towards the north appear probable. In the circumstances, I find that the prosecution has failed to establish the case sought up beyond

reasonable doubt. The decisions of the court below are set aside. The revision petitioner/accused is acquitted.

The criminal revision petition is allowed as above.

K.R.UDAYABHANU,
JUDGE

csl

K.R.UDAYABHANU, J

Crl.R.P.No.491 of 1996

ORDER

20th March, 2007

C.N.RAMACHANDRAN NAIR, J

O.P.No.25716/2002

JUDGMENT

8th March, 2007